

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0089

SENATE BILL NO. 26

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain reimbursement and subrogation provisions
2 regarding workers' compensation claims.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 62-1-1.3 be amended to read as follows:

5 62-1-1.3. If an employer denies coverage of a claim on the basis that the injury is not
6 compensable under this title due to the provisions of subsection 62-1-1(7)(a), (b), or (c), such
7 injury is presumed to be nonwork related for other insurance purposes, and any other insurer
8 covering bodily injury or disease of the injured employee shall pay according to the policy
9 provisions. If coverage is denied by an insurer without a full explanation of the basis in the
10 insurance policy in relation to the facts or applicable law for denial, the director of the Division
11 of Insurance may determine such denial to be an unfair practice under chapter 58-33. If it is later
12 determined that the injury is compensable under this title, the employer shall immediately
13 reimburse the parties not liable for all payments made, including interest at the category B rate
14 specified in § 54-3-16, as follows:

15 (1) If medical expenses have been denied by the employer, paid by a health plan, insurer,



1 or an individual, and the expenses are later determined to be compensable, the
2 employer shall satisfy the employer's obligation of payment of the medical expenses
3 by paying the expenses directly to the health plan, insurer, or individual to the extent
4 of the health plan's, insurer's, or individual's payment. A medical provider shall
5 reimburse the employee for medical expense payments received from the employee
6 for expenses determined to be compensable under this title;

7 (2) If the medical expenses were not paid by a health plan, insurer, or individual, the
8 employer shall satisfy the employer's obligation of payment of the medical expenses
9 by paying the expenses directly to the medical providers concerned; or

10 (3) If disability benefits have been paid by a health insurer and benefits are later
11 determined to be compensable, the employer shall satisfy the employer's obligation
12 by paying the health insurer directly, to the extent of that health insurer's disability
13 payments, but not to exceed the amount of disability benefits payable under this
14 chapter. Any payment made to the health insurer pursuant to this subdivision
15 constitutes an offset against the total obligation of the employer.